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GENERAL ELECTRIC COMPANY  
GLOBAL RESEARCH  
PATENT DOCKET RM. BLDG. K1-4A59  
NISKAYUNA NY 12309

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**JUN 27 2005**

**OFFICE OF PETITIONS**

In re Application of	:	
Hardy, et al.	:	
Application No. 09/681,406	:	DECISION
Filing Date: 30 March, 2001	:	
Attorney Docket No. RD-28,383-3	:	

This is a decision on the petition filed on 12 July, 2004, to revive the instant application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay, and, in the alternative, requesting the withdrawal of the holding of abandonment under 37 C.F.R. §1.181.

For the reasons set forth below, the petition:

- under 37 C.F.R. §1.181 is **DISMISSED**; and
- under 37 C.F.R. §1.137(b) is **GRANTED**; and

**BACKGROUND**

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 3 December, 2003, with reply due absent extension of time on or before 3 March, 2004;
- the application went abandoned after midnight 3 March, 2004;

- the Office mailed the Notice of Abandonment on 15 July, 2004;
- Petitioner now alleges and evidences that, on 3 February, 2004, she transmitted via FAX a set of papers meant to be her reply in the instant matter, however, upon inspection they are recognized to be papers for another application;
- Petitioner filed, contemporaneously with the instant petition (and fee) an amendment as a reply, and made the statement of unintentional delay.

### ANALYSIS

In a paper styled "Petition to Withdraw Holding of Abandonment Under 37 C.F.R. [§]1.137(b)"<sup>1</sup> (sic) Petitioner states: "Applicant's undersigned attorney erroneously believed that she submitted an amendment in response to the 12/3/03 [Office action] via facsimile. However, upon receipt of the Notice of Abandonment, Applicant's attorney notice the amendment for another application had been erroneously sent for the present application." (Petition, at page 1. Emphasis supplied.)

Thus, Petitioner acknowledges that the error was not that of the Office.

#### As to a Request to Withdraw the Holding of Abandonment

Petitioner contends that the holding of abandonment should be withdrawn, and then proceeds to demonstrate that the error in the matter was not that of the Office, as would be required to support a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.

The courts have determined the construct for properly supporting a petition seeking withdrawal

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<sup>1</sup> Petitioner's attention is directed to MPEP §711.03(c)(I), which provides in pertinent part:

\* \* \*

#### I. PETITION TO WITHDRAW HOLDING OF ABANDONMENT

A petition to revive an abandoned application \* \* \* should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based on unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay. (Emphasis supplied.)

\* \* \*

of a holding of abandonment.<sup>2</sup>

Rather than making a showing of error on the part of the Office, Petitioner acknowledges having failed to respond consistent with the commentary set forth at MPEP §711.03(c).

Thus, Petitioner also fails to satisfy the showing required under Delgar and thus to be considered under the provisions of 37 C.F.R. §1.181.

As to Allegations  
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, the statement of unintentional delay, a proper reply, and—where appropriate—a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Petitioner has satisfied the requirement of a petition under 37 C.F.R. §1.137(b).

CONCLUSION

The petition:

- to withdraw the holding of abandonment under 37 C.F.R. §1.181 is **dismissed**; and
- under 37 C.F.R. §1.137(b) is **granted** and the petition fee (\$1,330.00) is charged as authorized to Deposit Account 07-0868.

The instant application is released to Technology Center 3700 for further examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

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<sup>2</sup> See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).